IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.: 753 of 2006.

Decided on: 8.5.2007.

Mrs. Lalita Khanna & Others

… … … Petitioners.

Versus

Shri Vinod Kumar Malik & Others .

… … … Respondents.

Coram:

The Hon'ble Mr. Justice Rajiv Sharma, J.

Whether approved for reporting?[1] *No.*

For the petitioners: **Mr. Ajay Kumar, Advocate.**

For the Respondents: **Mr. Balwant Kukreja, Advocate.**

Rajiv Sharma, Judge:

This petition is directed against the order dated 29th May, 2006 passed by the Financial Commissioner (Appeals), Himachal Pradesh.

The necessary facts for adjudication of this petition are that the petitioners aggrieved by the order passed by the Settlement Collector, Shimla dated 22.3.1999 have preferred an appeal before the Divisional Commissioner, Shimla. The learned Commissioner, Shimla has allowed the appeal on 8th October,

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Whether reporters of local papers may be allowed to see the judgment? No.

1999. It will be apt to reproduce paras 9 to 11 of the order passed by the learned Commissioner, Shimla on 8.10.1999 for effective adjudication of this petition as under:-

> **"I have gone through the case record and considered the arguments advanced by the counsels for both sides. Perusal of the record shows that the Ld. Settlement Collector in his impugned order dated 23.02.1999 has relied on the report of the Settlement Naib Tehsildar dated 10.2.1999 which was submitted after the spot inspection of the land in dispute. The appellant in this case was not afforded any opportunity at the time of spot inspection though specific directions were issued to the Naib Tehsildar that the inquiry be conducted in the presence of the parties. After proceeding ex-parte against the appellants the impugned order was un-warranted. As per order IX rule VIII of the CPC Ld Settlement Collector should have dismissed the application in default. Moreover, the respondent has not made any admission as claimed in the application, therefore, Settlement Collector should not have passed the impugned order dated 22.3.1999.**
>
> **In the instant case, report submitted by the Settlement Naib Tehsildar dated 10.2.1999 differs from the report of the then Naib Tehsildar dated 18.10.1994 and Ld Settlement Collector has taken convenient facts from both these reports.**
>
> **For these reasons, it is considered appropriate to set aside the order of the Ld Settlement Collector dated 22.3.1999 and to remanded the case back to decide it afresh in course of which he shall associate all the**

necessary parties, including the Government whose interest have also been affected as a result of the impugned order."

Feeling aggrieved by this order passed by the Divisional Commissioner, Shimla, the respondents No.1 and 2 filed revision petition before the Financial Commissioner (Appeals) on 4.2.2000. The learned Financial Commissioner (Appeals) has accepted the revision on 29.5.2006 vide Annexure P-6.

Mr. Ajay Kumar appearing on behalf of the petitioners has strenuously argued that the order passed by the Financial Commissioner (Appeals) on 29.5.2006 is not sustainable in the eyes of law as the order passed by the Divisional Commissioner on 8.10.1999 was in accordance with law. Mr. Balwant Kukreja appearing on behalf of the respondent(s) has supported the order passed by the Financial Commissioner on 29.5.2006.

I have perused the record and heard the parties.

Admittedly, the petitioners were not afforded any opportunity at the time of spot inspection though specific directions were issued to the Naib Tehsildar that the inquiry be conducted in presence of the parties. The Divisional Commissioner has given a categorical finding that the report submitted by Settlement Naib Tehsildar dated 10.2.1999 and the report submitted by the then Naib Tehsildar dated 18.10.1994 are at variance. The Divisional Commissioner, Shimla has remanded the matter since the authorities below had committed procedural irregularity by not affording reasonable opportunity to the petitioners at the time of spot inspection and during the course of

proceedings also by the learned Collector Settlement, Shimla. Thus, the Divisional Commissioner has rightly set aside the order of Settlement Collector and has remanded the matter.

The findings recorded by the Financial Commissioner (Appeals) while setting aside the order of Divisional Commissioner are against the basic principles of natural justice to be complied with during the course of proceedings which are quasi-judicial in nature. The Financial Commissioner (Appeals) has observed in his order dated 29.5.2006 that the petitioners were not available on the given address nor was their general power of attorney apparently interested in associating him with inquiry and merely on that basis has recorded wrong findings that neither the petitioners nor their general power of attorney were interested during the course of inquiry.

Sufficient material has been placed on record by the petitioners to establish that they were always keen and interested to protect their interests during the course of the proceedings. Assuming that the petitioners were not available at the first instance, the effort was required to be made to serve them again and it was only if the authority was convinced that despite the best efforts made the petitioners could not be served, the matter could be proceeded further. The very purpose of the spot inspection will be defeated if all the interested parties are not associated during the course of inspection. Since the petitioners were not satisfied with the earlier spot inspection conducted by the Naib Tehsildar in the year 1994 and it was at their instance

that second spot inspection was to be carried out in the year 1998. Admittedly, the petitioners have not been associated during the course of spot inspection conducted on 10.2.1999.

The upshot of the above discussion is that the order dated 29.5.2006 passed by the Financial Commissioner (Appeals) is not in accordance with law and the same is liable to be quashed and set aside.

Accordingly, this petition is allowed and the impugned order dated 29.5.2006 is quashed and set aside. The order of the Divisional Commissioner dated 8.10.1999 is restored and consequently the Collector Settlement is directed to proceed with the matter and to decide the same within a period of eight weeks from today. There shall be no order as to costs.

(Rajiv Sharma)
Judge

May 8, 2007
(sck).